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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 16, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CASEY ALLEN GREER,

No. 2:16-cv-00023-MKD

Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

vs.
COMMISSIONER OF SOCIAL

ECF Nos. 15, 19

SECURITY,
Defendant.

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 19. The parties consented to proceed before a magistrate judge. ECF No. 7. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No. 19).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1333(c)(3).

1 STANDARD OF REVIEW

2 A district court's review of a final decision of the Commissioner of Social
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
4 limited; the Commissioner's decision will be disturbed "only if it is not supported
5 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
6 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
7 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
8 (quotation and citation omitted). Stated differently, substantial evidence equates to
9 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
10 citation omitted). In determining whether the standard has been satisfied, a
11 reviewing court must consider the entire record as a whole rather than searching
12 for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its
14 judgment for that of the Commissioner. If the evidence in the record "is
15 susceptible to more than one rational interpretation, [the court] must uphold the
16 ALJ's findings if they are supported by inferences reasonably drawn from the
17 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
18 court "may not reverse an ALJ's decision on account of an error that is harmless."
19 *Id.* An error is harmless "where it is inconsequential to the [ALJ's] ultimate
20 nondisability determination." *Id.* at 1115 (quotation and citation omitted). The

1 party appealing the ALJ's decision generally bears the burden of establishing that
2 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-410 (2009).

3 FIVE-STEP EVALUATION PROCESS

4 A claimant must satisfy two conditions to be considered "disabled" within
5 the meaning of the Social Security Act. First, the claimant must be "unable to
6 engage in any substantial gainful activity by reason of any medically determinable
7 physical or mental impairment which can be expected to result in death or which
8 has lasted or can be expected to last for a continuous period of not less than twelve
9 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
10 "of such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy." 42 U.S.C. §
13 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to
15 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
16 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
17 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial
18 gainful activity," the Commissioner must find that the claimant is not disabled. 20
19 C.F.R. § 416.920(b).

1 If the claimant is not engaged in substantial gainful activity, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 "any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities," the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. 20 C.F.R. § 416.920(c).

9 At step three, the Commissioner compares the claimant's impairment to
10 severe impairments recognized by the Commissioner to be so severe as to preclude
11 a person from engaging in substantial gainful activity. 20 C.F.R. §
12 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant's impairment does not meet or exceed the
16 severity of the enumerated impairments, the Commissioner must pause to assess
17 the claimant's "residual functional capacity." Residual functional capacity (RFC),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
20 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of
12 adjusting to other work, the Commissioner must find that the claimant is not
13 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to
14 other work, analysis concludes with a finding that the claimant is disabled and is
15 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

16 The claimant bears the burden of proof at steps one through four above.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work; and (2) such work "exists in significant

1 numbers in the national economy.” 20 C.F.R. § 416.920(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 ALJ’S FINDINGS

4 Plaintiff applied for Title XVI supplemental security income benefits on
5 September 11, 2012. Tr. 130-38. He alleged a disability onset date of June 1,
6 2006. Tr. 130. The application was denied initially and upon reconsideration.
7 Tr. 86-89, 96-98. Plaintiff appeared at a hearing before an Administrative Law
8 Judge (ALJ) on September 17, 2014. Tr. 44-67. On November 4, 2014, the ALJ
9 denied Plaintiff’s claim. Tr. 27-43.

10 At step one, the ALJ found that Plaintiff has not engaged in substantial
11 gainful activity since September 11, 2012. Tr. 32. At step two, the ALJ found
12 Plaintiff has the following severe impairments: old non-union left scaphoid with no
13 osteoarthritis or neurological findings, mild right knee osteochondroma,
14 dysthymia, pain disorder, and anxiety. Tr. 32. At step three, the ALJ found that
15 Plaintiff does not have an impairment or combination of impairments that meets or
16 medically equals a listed impairment. Tr. 33. The ALJ then concluded that
17 Plaintiff has the RFC to perform light work with the following non-exertional
18 limitations:

19 The claimant can frequently climb ramps, stairs, ladders, ropes, and
20 scaffolds. He can frequently balance, stoop, kneel, crouch, and crawl. He is
able to understand, remember, and carry out simple, routine repetitive tasks
and instructions. The claimant is able to maintain attention/concentration on

1 simple, routine, repetitive tasks for 2 hour intervals between regularly
2 scheduled breaks. The claimant should have no interaction with the public.
3 He can have occasional, superficial, non-collaborative interaction with
4 coworkers. He should deal with things rather than people.

5 Tr. 34. At step four, the ALJ found that Plaintiff is not capable of performing past
6 relevant work. Tr. 39. The ALJ determined at step five that there are jobs that
7 exist in significant numbers in the national economy that the Plaintiff can perform
8 given his age, education, work experience, and residual functional capacity such as
9 assembler, product inspector/checker, and hand packager. Tr. 39-40. On that
10 basis, the ALJ concluded that Plaintiff is not disabled as defined in the Social
11 Security Act. Tr. 40.

12 On December 8, 2015, the Appeals Council denied review, making the
13 Commissioner's decision final for purposes of judicial review. *See* 42 U.S.C.
14 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

15 ISSUES

16 Plaintiff seeks judicial review of the Commissioner's final decision denying
17 him supplemental security income benefits under Title XVI of the Social Security
18 Act. ECF No. 15. Plaintiff raises the following issues for this Court's review:
19

- 20 1. Whether the ALJ properly discounted Plaintiff's symptom claims; and
- 21 2. Whether the ALJ properly weighed the medical opinion evidence.

22 ECF No. 15 at 11.

DISCUSSION

A. Adverse Credibility Finding

3 First, Plaintiff faults the ALJ for failing to provide specific findings with
4 clear and convincing reasons for discrediting his symptom claims. ECF No. 15 at
5 11-14.

6 An ALJ engages in a two-step analysis to determine whether a Plaintiff's
7 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must
8 determine whether there is objective medical evidence of an underlying
9 impairment which could reasonably be expected to produce the pain or other
10 symptom alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
11 "The claimant is not required to show that [his] impairment could reasonably be
12 expected to cause the severity of the symptom [he] has alleged; [he] need only
13 show that it could reasonably have caused some degree of the symptom." *Vasquez*
14 *v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

15 Second, “[i]f the claimant meets the first test and there is no evidence of
16 malingering, the ALJ can only reject the claimant’s testimony about the severity of
17 the symptoms if she gives ‘specific, clear and convincing reasons’ for the
18 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
19 citations and quotations omitted). “General findings are insufficient; rather, the
20 ALJ must identify what testimony is not credible and what evidence undermines

1 the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
 2 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ
 3 must make a credibility determination with findings sufficiently specific to permit
 4 the court to conclude that the ALJ did not arbitrarily discredit claimant's
 5 testimony."). "The clear and convincing [evidence] standard is the most
 6 demanding required in Social Security cases." *Garrison v. Colvin*, 759 F.3d 995,
 7 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920,
 8 924 (9th Cir. 2002)).

9 In making an adverse credibility determination, the ALJ may consider, *inter*
 10 *alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the
 11 claimant's testimony or between his testimony and his conduct; (3) the claimant's
 12 daily living activities; (4) the claimant's work record; and (5) testimony from
 13 physicians or third parties concerning the nature, severity, and effect of the
 14 claimant's condition. *Thomas*, 278 F.3d at 958-59.

15 This Court finds the ALJ provided specific, clear, and convincing reasons
 16 for finding that Plaintiff's statements concerning the intensity, persistence, and
 17 limiting effects of his symptoms were "not entirely credible." Tr. 35.

18 1. *Objective Medical Evidence*

19 First, the ALJ found that the objective medical evidence in Plaintiff's
 20 medical record does not support the degree of limitation he alleged. Tr. 35-36. An

1 ALJ may not discredit a claimant's pain testimony and deny benefits solely
2 because the degree of pain alleged is not supported by objective medical evidence.
3 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
4 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir.
5 1989). However, the medical evidence is a relevant factor in determining the
6 severity of a claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20
7 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2); *see also* S.S.R. 96-7p.¹ Minimal
8 objective evidence is a factor which may be relied upon in discrediting a claimant's
9 testimony, although it may not be the only factor. *See Burch v. Barnhart*, 400 F.3d
10 676, 680 (9th Cir. 2005).

11 The ALJ set out, in detail, the medical evidence regarding Plaintiff's
12 physical impairments, *see* Tr. 35-38, and ultimately concluded that the medical
13 record did not support Plaintiff's allegedly debilitating impairments. For example,
14 Plaintiff alleges that he has left wrist problems, however, as the ALJ noted, x-rays

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16 ¹ S.S.R. 96-7p was superseded by S.S.R. 16-3p effective March 16, 2016. The new
17 ruling also provides that the consistency of a claimant's statements with objective
18 medical evidence and other evidence is a factor in evaluating a claimant's
19 symptoms. S.S.R. 16-3p at *6. Nonetheless, S.S.R. 16-3p was not effective at the
20 time of the ALJ's decision and therefore does not apply in this case.

1 of his hands were negative. Tr. 35 (citing Tr. 222). His left wrist showed a non-
2 union fracture, however, that had previously been noted in Plaintiff's medical
3 record and was not the presenting cause of Plaintiff's pain. Tr. 35 (citing Tr. 222).
4 Upon examination, Plaintiff's left wrist had a normal range of motion. Tr. 35
5 (citing Tr. 216).

6 Plaintiff also complained of limiting pain in his right knee, but as the ALJ
7 noted, objective medical evidence did not support this assertion. Tr. 35 (citing Tr.
8 222). X-rays of Plaintiff's knees were negative. Tr. 35 (citing Tr. 222). Plaintiff's
9 bloodwork to rule out rheumatoid arthritis and other arthritic conditions resulted in
10 a negative finding. Tr. 35 (citing Tr. 222). The ALJ observed that Plaintiff "was
11 advised that he had a benign incidental finding of osteochondroma in the right knee
12 and he presented at his next visit wearing knee brace which had not been present at
13 his prior visit." Tr. 35 (citing Tr. 222). Claimant's right knee had a full range of
14 motion upon examination. Tr. 35 (citing Tr. 217). Plaintiff's treating provider
15 opined that Plaintiff had "deconditioning of quadriceps muscles most likely
16 secondary to sedentary lifestyle." Tr. 223. He recommended that Plaintiff "begin
17 exercises at home to strengthen his quadriceps." Tr. 223.

18 The record also supports the ALJ's finding that the objective evidence does
19 not support Plaintiff's claims that he suffered lower back pain. X-rays of
20 Plaintiff's lumbar spine were negative. Tr. 35 (citing Tr. 222). Mr. Moss told

1 Plaintiff that he did “not have any objective findings to substantiate a diagnosis
2 consistent with chronic disability.” Tr. 36 (citing Tr. 254). He also recommended
3 that Plaintiff get a second opinion. Tr. 36 (citing Tr. 254). Three months later,
4 Plaintiff informed Mr. Moss that he sought a second opinion, and the provider
5 reviewed Plaintiff’s medical records and noted that he “had a very extensive
6 workup and that no further testing was indicated or necessary.” Tr. 36 (citing Tr.
7 258). The ALJ noted that “[f]ollowing this second opinion, the claimant’s reports
8 about his knee, wrist and back problems ceased, and there is no record of any
9 further complaints of treatments for these conditions.” Tr. 36 (*see* Tr. 258-306).
10 During this time, Plaintiff was regularly seeing his treating provider, and made
11 complaints about other issues, including relatively minor issues such as a persistent
12 cough. Tr. 258-306, 290.

13 The results of Plaintiff’s mental status examination were inconsistent with
14 the degree of limitation Plaintiff alleged. As the ALJ noted, Plaintiff scored 28 out
15 of 30 possible points, Tr. 36, where “a score of 24 is the cut off score to be
16 classified in the impairment range.” Tr. 238. Plaintiff was oriented during the
17 examination. Tr. 36 (citing Tr. 238). He successfully counted backwards from
18 100 by sevens, wrote “world” forward and backward, wrote a sentence, obeyed a
19 three step command, named the current and past presidents, and perform basic
20 verbal skills. Tr. 36 (citing Tr. 238). Dr. Dalley posited that Plaintiff “appears to

1 exhibit average mental control, and demonstrates an average fund of general
2 information.” Tr. 238. He also posited that Plaintiff “has the ability to think
3 abstractly.” *Id.* Plaintiff’s scores on trail-making tests, “used for visual-conceptual
4 and visual-motor tracking” were “within the normal limits range.” Tr. 36 (citing
5 Tr. 238). Overall, the results of Plaintiff’s mental status examination were normal,
6 and do not support Plaintiff’s assertion that his mental health conditions prevent
7 him from working.

8 The ALJ further observed that there is not medical evidence in the record to
9 support Plaintiff’s alleged onset date. Tr. 35. Plaintiff alleged that his disability
10 started on June 1, 2006. Tr. 130. However, there is not any evidence in the
11 medical record to support disability onset. Plaintiff did not allege a precipitating
12 event or medical procedure which resulted in disability. Tr. 35. In fact, the
13 evidence in Plaintiff’s medical record does not begin until October 2012, more
14 than six years after the alleged onset date. Tr. 35. Plaintiff argues that the ALJ
15 should have made a finding based on the appropriate onset date and awarded
16 benefits from that date. ECF No. 15 at 12. However, the Plaintiff’s response
17 misinterprets the ALJ’s argument. That is, the question is not *when* Plaintiff’s
18 disability onset, but *whether* he became disabled at all. The ALJ reasonably
19 concluded that the lack of medical evidence during the several year period from the
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1 alleged onset date, June 1, 2006 to October 2012 undermined his claim of disabling
2 impairments.

3 Plaintiff alleges that the ALJ's reasoning regarding objective medical
4 evidence is flawed because the ALJ failed to take into account certain objective
5 evidence. ECF No. 15 at 12. Specifically, Plaintiff contends that the ALJ failed to
6 consider Dr. Week's observations that Plaintiff's gait was stiff, he appeared to
7 experience pain putting on his shoes, and that he had decreased range of motion.

8 *Id.* However, the ALJ's assertion that the objective medical evidence does not
9 support Plaintiff's alleged symptoms does not require a complete and total lack of
10 objective evidence in the record. Instead, the ALJ found that the overall medical
11 record does not support Plaintiff's symptom claims. Even if the medical evidence
12 in this case may be interpreted more favorably to the Plaintiff, it is susceptible to
13 more than one rational interpretation, and therefore the ALJ's conclusion must be
14 upheld. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

15 *2. Minimal Treatment Sought*

16 The ALJ found that the degree of limitation Plaintiff alleged was
17 inconsistent with the minimal treatment sought. Tr. 36. The medical treatment a
18 Plaintiff seeks to relieve his symptoms is a relevant factor in evaluating the
19 intensity and persistence of symptoms. 20 C.F.R. §§416.929(c)(3)(iv), (v). “[I]n
20 assessing a claimant's credibility, the ALJ may properly rely on ‘unexplained or

1 inadequately explained failure to seek treatment or to follow a prescribed course of
2 treatment.’ ” *Molina*, 674 F.3d at 1113 (quoting *Tommasetti v. Astrue*, 533 F.3d
3 1035, 1039 (9th Cir. 2008)). The ALJ observed that Plaintiff did not take any pain
4 medication despite his allegedly disabling pain. Tr. 36. The ALJ relied on
5 Plaintiff’s testimony to find that throughout treatment, Plaintiff did not regularly
6 take pain medication for his joints or his back. Tr. 36 (citing Tr. 196, 219). He
7 reported to one provider that he has tried ibuprofen, his girlfriend’s oxycodone,
8 and Tylenol for his joint pain when the pain gets bad. Tr. 36 (citing Tr. 219). But,
9 he reported that the ibuprofen and oxycodone were only minimally effective, and
10 the Tylenol offered no relief. *Id.*

11 Plaintiff argues that he was prescribed Naproxen and Naprosyn to treat pain,
12 which he reasons undercuts the ALJ’s argument. ECF No. 15 at 12-13 (citing Tr.
13 220-21). Both Naproxen and Naprosyn are nonsteroidal anti-inflammatory drugs
14 (NSAIDs) similar to ibuprofen. Plaintiff was instructed to take them “as needed
15 for pain[.]” Tr. 220-21. When the Plaintiff self-reported his medications, he did
16 not list the use of Naproxen, Naprosyn, or any pain medication, which the ALJ
17 logically interpreted to mean Plaintiff did not use these medications. Tr. 36. The
18 ALJ did not err in finding that Plaintiff’s lack of medication use discounted his
19 symptom testimony. Moreover, the relatively minimal treatment prescribed (anti-
20 inflammatory medication) is not consistent with disabling conditions.

1 The ALJ further observed that the Plaintiff did not seek regular mental
2 health treatment, despite his reports that he has been depressed his entire life,
3 worsening over time. Tr. 36 (citing Tr. 240). Where the evidence suggests lack of
4 mental health treatment is part of a claimant's mental health condition, it may be
5 inappropriate to consider a claimant's lack of mental health treatment as evidence
6 of a lack of credibility. *See Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir.
7 1996). However, when there is no evidence suggesting a failure to seek treatment
8 is attributable to a mental impairment rather than personal preference, it is
9 reasonable for the ALJ to conclude that the level or frequency of treatment is
10 inconsistent with the level of complaints. *Molina*, 674 F.3d at 1113-1114. Here,
11 nothing in Plaintiff's medical record indicates that Plaintiff's lack of mental health
12 treatment is attributable to his alleged mental illness.

13 Plaintiff's medical record indicates that he only saw mental health treatment
14 providers around the time that he was applying for benefits and did not maintain
15 treating relationships with those providers. As discussed *infra*, Plaintiff sought a
16 mental health evaluation from Dr. Arnold, but only after he was informed that his
17 physical complaints were not sufficient to establish disability. Tr. 36 (citing Tr.
18 240-44). Plaintiff also saw Counselor Phil Eager around the time that he applied
19 for benefits. Tr. 253. There is no evidence in Plaintiff's medical record regarding
20 his appointment with Counselor Eager, other than a passing reference from

1 Plaintiff's treating provider as the basis for beginning a course of anti-depressants.
2 Tr. 253. There is no evidence of any follow-up appointments or continuing
3 treatment with either Dr. Arnold or Mr. Eager. These isolated appointments
4 suggest that Plaintiff's mental condition did not prevent him from seeking
5 treatment, as he was able to attend appointments when required of him to establish
6 disability. During Plaintiff's mental health evaluation with Dr. Arnold, Plaintiff
7 posited that he suspected he had several mental health impairments, including
8 clinical depression, ADHD, and Asperger's, however, he "denied a significant
9 history of mental health treatment." Tr. 240-42. Plaintiff regularly received other
10 treatment for conditions such as hypogonadism, suggesting that he was able to seek
11 regular treatment if inclined. *See* Tr. 260-306.

12 From Plaintiff's medical record, it appears that the only regular mental
13 health treatment he received was a prescription for anti-depressants from his
14 treating provider. *See* Tr. 248-312. Despite seeing mental health providers for a
15 few isolated appointments, Plaintiff did not have regular treatment with a mental
16 health provider. As will be discussed *infra*, this course of treatment for Plaintiff's
17 mental health impairments is insufficient to suggest serious mental health issues.
18 Plaintiff had access to care but did not seek out dedicated mental health treatment,
19 despite his suspicions that he was suffering from several mental health conditions,
20

1 which casts doubt on the alleged severity of his mental health symptoms. *See*
2 Tr. 260-306.

3 3. *Evidence of Exaggeration*

4 Next, the ALJ discredited Plaintiff's testimony due to evidence suggesting
5 that Plaintiff exaggerated symptoms and limitations. The tendency to exaggerate is
6 a permissible reason to discount Plaintiff's credibility. *See Tonapetyan v. Halter,*
7 242 F.3d 1144, 1148 (9th Cir. 2001) (the ALJ appropriately considered Plaintiff's
8 tendency to exaggerate when assessing Plaintiff's credibility, which was shown in
9 a doctor's observation that Plaintiff was uncooperative during cognitive testing but
10 was "much better" when giving reasons for being unable to work).

11 Plaintiff's results on a Pain-Patient-Profile (P3) test suggested that his
12 "subjective pain experience/somatic symptoms were greater than might be
13 expected, given his medical condition." Tr. 36 (citing Tr. 243). Upon
14 examination, Dr. Dalley indicated that Plaintiff was "somatically preoccupied" and
15 was not particularly interested in discussing his mental health. Tr. 36 (citing
16 Tr. 237). As discussed *supra*, Plaintiff adopted a knee brace after being told of a
17 benign finding of osteochondroma in his right knee despite normal examinations
18 of Plaintiff's knee. Tr. 35 (citing Tr. 222).

19 The ALJ noted that Plaintiff did not report mental health symptoms in his
20 medical record until "after he applied for Washington State Department of Social

1 and Health Services (DSHS) benefits, and after his treating provider told him there
2 was no objective evidence to support his physical complaints.” Tr. 36 (citing Tr.
3 254). Plaintiff argues first that “it is unclear whether the disability opinion was
4 communicated to [Plaintiff].” ECF No. 15 at 13. Plaintiff’s primary care provider
5 noted on February 14, 2013² that he “discussed at length” with Plaintiff his opinion
6 that Plaintiff does “not have any objective findings to substantiate a diagnosis
7 consistent with chronic disability.” Tr. 254. It is clear from this note that Mr.
8 Moss’s opinion was communicated to Plaintiff, so Plaintiff’s first argument has no
9 factual merit.

10 Second, Plaintiff argues he was already being treated for depression when
11 Mr. Moss informed him that there was not sufficient objective findings to support a
12 chronic disability diagnosis.³ ECF No. 15 at 13. Mr. Moss also noted on February
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14 ² Plaintiff incorrectly identifies the date as May 3, 2013. ECF No. 15 at 13.
15 However, in reviewing the ALJ’s opinion and Plaintiff’s medical record, this Court
16 determined that the ALJ most likely was referring to Mr. Moss’s clinical note from
17 February 14, 2013.

18 ³ Plaintiff does not specifically challenge the ALJ’s claim that Plaintiff started
19 mental health treatment after he applied for DSHS benefits. *See* ECF No. 15 at 13.
20 The ALJ did not undertake a factual finding as to when Plaintiff applied for DSHS

1 14, 2013 that Plaintiff “was recently seen by counselor Phil Eagar who noted that
2 Patient scored very high on the depression questionnaire and requested a possible
3 medication for depression.” Tr. 253. This undermines the ALJ’s finding that
4 Plaintiff only sought treatment for depression after being told that there was not
5 objective evidence to support his disability claim. *See* Tr. 36. The ALJ factually
6 erred in this assertion. However, the ALJ’s error here is harmless. As long as
7 there is substantial evidence supporting the ALJ’s decision and the error does not
8 affect the ultimate non-disability determination, the error is harmless. *See*
9 *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008);
10 *Stout v. Comm’r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *Batson*
11 *v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195-97 (9th Cir. 2004). Here, the
12 ALJ provided other valid reasons that Plaintiff’s medical record showed evidence

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14 benefits, and such information is not readily available in the record. *See* Tr. 36.
15 Plaintiff alleged that he was depressed on his DSHS psychological evaluation. Tr.
16 233. However, as discussed at length *supra*, Plaintiff’s medical record does not
17 support that he had any mental health treatment before he applied for SSI on
18 September 11, 2012. It appears from the record that the first mental health
19 treatment Plaintiff had was seeing Mr. Eagar in early 2013, after applying for
20 disability benefits.

1 of exaggeration. The ALJ also provided three other specific, clear and convincing
2 reasons to discount Plaintiff's credibility. Therefore, the factually incorrect
3 assertion regarding the timing of Plaintiff's mental health treatment is harmless as
4 the credibility determination is supportable without the factually incorrect
5 assertion.

6 4. *Poor Work Record*

7 The ALJ found that the Plaintiff's poor work record also diminished his
8 credibility. Tr. 37. Evidence of a poor work history that suggests a claimant is not
9 motivated to work is a permissible reason to discredit a claimant's testimony that
10 he is unable to work. *Thomas*, 278 F.3d at 959. The ALJ noted that Plaintiff
11 "worked only sporadically prior to the alleged disability onset date, which raises a
12 question as to whether the claimant's continuing unemployment is actually due to
13 medical impairments." Tr. 37. The ALJ took into account Plaintiff's incarceration
14 from 1996 to 2000 when considering Plaintiff's employment record. Tr. 37. Since
15 release from custody, Plaintiff earned at substantial gainful activity level once,
16 when he was a delivery driver for Pizza Hut for three months in 2007. Tr. 37
17 (citing Tr. 147, 54).

18 Plaintiff reports that he was one credit short of a high school diploma.
19 Tr. 241. He subsequently earned a GED followed by an associate's degree in
20 audio technology from Spokane Falls Community College in 2010. *Id.* Plaintiff

1 guessed that he has had ten or fewer jobs throughout his life. *Id.* He reported that
 2 he has been involuntarily terminated from two positions: once following a back
 3 injury, and once for failing to tell his employer that he was a level II registered sex
 4 offender. *Id.* Plaintiff reported that his last job ended on October 31, 2010. *Id.*
 5 He testified before the ALJ that he left that position because “[t]he pain got too
 6 unbearable.” Tr. 55. Plaintiff did not provide an explanation for why he left the
 7 other positions he testified about before the ALJ. *See* Tr. 53-55. The ALJ opined
 8 that Plaintiff’s “poor earnings record raises credibility concerns about the
 9 claimant’s motivation to seek and maintain employment.” Tr. 37. A poor work
 10 record is a specific, clear and convincing reason to discount Plaintiff’s credibility.
 11 *Ghanim*, 763 F.3d at 1163.

12 **B. Medical Opinion Evidence**

13 Plaintiff faults the ALJ for discounting the medical opinions of Kevin
 14 Weeks, D.O.; Robert Thompson, M.D.; Mahlon Dalley, Ph.D.; and John Arnold,
 15 Ph.D. ECF No. 15 at 14-18.

16 There are three types of physicians: “(1) those who treat the claimant
 17 (treating physicians); (2) those who examine but do not treat the claimant
 18 (examining physicians); and (3) those who neither examine nor treat the claimant
 19 but who review the claimant’s file (nonexamining or reviewing physicians).”

20 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).

1 “Generally, a treating physician’s opinion carries more weight than an examining
2 physician’s, and an examining physician’s opinion carries more weight than a
3 reviewing physician’s.” *Id.* “In addition, the regulations give more weight to
4 opinions that are explained than to those that are not, and to the opinions of
5 specialists concerning matters relating to their specialty over that of
6 nonspecialists.” *Id.* (citations omitted).

7 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
8 reject it only by offering “clear and convincing reasons that are supported by
9 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
10 “However, the ALJ need not accept the opinion of any physician, including a
11 treating physician, if that opinion is brief, conclusory and inadequately supported
12 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
13 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
14 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
15 may only reject it by providing specific and legitimate reasons that are supported
16 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester* 81 F.3d at 830-
17 31).

18 The opinion of an acceptable medical source such as a physician or
19 psychologist is given more weight than that of an “other source.” *See* SSR 06-03p
20 (Aug. 9, 2006), *available at* 2006 WL 2329939 at *2; 20 C.F.R. § 416.927(a).

1 “Other sources” include nurse practitioners, physician assistants, therapists,
2 teachers, social workers, and other non-medical sources. 20 C.F.R. §§
3 404.1513(d), 416.913(d). The ALJ need only provide “germane reasons” for
4 disregarding an “other source” opinion. *Molina*, 674 F.3d at 1111. However, the
5 ALJ is required to “consider observations by nonmedical sources as to how an
6 impairment affects a claimant’s ability to work.” *Sprague v. Bowen*, 812 F.2d
7 1226, 1232 (9th Cir. 1987).

8 1. *Dr. Weeks*

9 Dr. Weeks evaluated Plaintiff on November 10, 2012 and opined that
10 Plaintiff could lift and carry ten pounds frequently and twenty pounds
11 occasionally; sit for six hours in an eight hour work day; climb, balance, stoop,
12 crawl, crouch, and kneel frequently. Tr. 213-17. The ALJ afforded this portion of
13 Dr. Weeks’ opinion “significant weight.” Tr. 37. The ALJ afforded “no weight”
14 to Dr. Weeks’ opinion that Plaintiff could stand and work for at least two hours but
15 fewer than six hours in an eight hour work day. Tr. 37 (citing Tr. 217).

16 Dr. Weeks’ opinion is contradicted by Mr. Moss’s opinion, Tr. 254, so the
17 ALJ was required to provide specific and legitimate reasons to discount it. *Bayliss*,
18 427 F.3d at 1216.

19 The ALJ discounted Dr. Weeks’ opinion because the objective evidence of
20 record does not support the opined limitation. Tr. 37. An ALJ may discredit

1 treating physicians' opinions that are unsupported by the record as a whole or by
2 objective medical findings. *Batson*, 359 F.3d at 1195. The ALJ cited evidence
3 from Mr. Moss, Plaintiff's treating provider, that Plaintiff's medical record did not
4 contain objective evidence to support a finding of disability. Tr. 37 (citing Tr.
5 254). He cited evidence that Plaintiff's low back exams and x-rays were all within
6 normal limits. Tr. 37 (citing Tr. 216-222). The osteochondroma on Plaintiff's
7 right knee was a "benign incidental finding." Tr. 222. Plaintiff's lab results came
8 back negative for arthritis, osteoarthritis, or any other conditions that could be the
9 precipitating cause of his pain. Tr. 254. At his treating provider's suggestion,
10 Plaintiff sought a second opinion who indicated that Plaintiff has "had a very
11 extensive workup and that no further testing was indicated or necessary." Tr. 258.

12 Furthermore, the objective evidence in Dr. Weeks' own report does not
13 support the opined limitation. *See* Tr. 213-17. While Dr. Weeks did note that
14 Plaintiff had decreased range of motion in the lumbar spine, he ultimately
15 diagnosed Plaintiff with "minimally decreased range of motion." Tr. 217.
16 Furthermore, Dr. Weeks observed that Plaintiff was "in no acute distress" during
17 the examination. Tr. 215. He noted that Plaintiff had an antalgic gait, but referred
18 to it as "mildly antalgic[.]" Tr. 215. Plaintiff argues that Dr. Weeks' observations
19 regarding Plaintiff's lumbar range of motion and gait are objective evidence
20 supporting the opined limitation which the ALJ ignored. ECF No. 15 at 15.

1 However, Plaintiff misconstrues the legal standard: the question the Court must ask
2 is not is there *any* objective evidence that supports Dr. Weeks' opinion, but
3 instead, is the ALJ's decision supported by substantial evidence. *See Batson*, 359
4 F.3d at 1195. In this case, the ALJ reasonably concluded that the objective
5 evidence in Dr. Weeks' own report and the objective evidence from the overall
6 medical record both undercut the opined limitation.

7 2. *Dr. Thompson*

8 Dr. Thompson, a reviewing physician, testified at Plaintiff's hearing before
9 the ALJ as an impartial medical expert. Tr. 48-51. He opined that Plaintiff could
10 lift and carry twenty pounds occasionally and ten pounds frequently. Tr. 50. The
11 ALJ afforded this portion of Dr. Thompson's opinion "significant weight." Tr. 37.
12 He further opined that Plaintiff could sit for two hours at a time for a total of six
13 hours throughout an eight hour work day and stand for one hour at a time, for a
14 total of four hours during the work day.⁴ Tr. 50. He further opined that Plaintiff

15
16 ⁴ The ALJ incorrectly reports these limitations as Plaintiff "could sit for 2 hours at
17 one time and stand/walk for 6 hours in an 8 hour workday." Tr. 37. Plaintiff does
18 not challenge the ALJ's error in recitation, but instead also misreports both Dr.
19 Thompson's opined limitations and the ALJ's recitation of those limitations. *See*
20 ECF No. 15 at 15-16 (Plaintiff asserts the opined limitation was that Plaintiff could

1 was limited to occasionally handling, pushing and pulling with his left hand “due
2 to the claimant’s old left scaphoid non-union [fracture].” Tr. 37 (citing Tr. 50). He
3 limited Plaintiff to occasionally climbing stairs, ramps, ladders, and scaffolds,
4 crouching and stooping with no crawling. Tr. 50. The ALJ afforded this portion
5 of Dr. Thompson’s opinion “little weight.” Tr. 38.

6 Dr. Thompson’s opinion is contradicted by Mr. Moss’s opinion, Tr. 254, so
7 the ALJ must provide specific and legitimate reasons to discount it. *Bayliss*, 427
8 F.3d at 1216.

9 The ALJ rejected Dr. Thompson’s opinion because Plaintiff’s medical
10 record does not support the opined limitation. Tr. 37-38. An ALJ may discredit
11 treating physicians’ opinions that are unsupported by the record as a whole or by
12 objective medical findings. *Batson*, 359 F.3d at 1195. The ALJ found that x-rays
13 in Plaintiff’s medical record show that Plaintiff had a non-union scaphoid fracture
14 that predated Plaintiff’s claim for disability. Tr. 38 (citing Tr. 222 (“Patient was
15 noted to have a non-union fracture in the left wrist but this was already noted and

16
17 “sit/walk two hours at a time and up to six hours in an eight-hour workday.”)
18 Because Plaintiff did not challenge the ALJ’s error, it is waived on appeal.
19 *Campbell v. Burt*, 141 F.3d 927, 931 (9th Cir. 1998) (holding that issues not raised
20 before the district court are waived on appeal).

1 was not the presenting problem.”)). Plaintiff did not seek treatment for his wrist
2 condition after his application for benefits. He complained of wrist pain when he
3 saw Mr. Moss in October 2012, incident to his application for disability. Tr. 219.
4 He also complained of wrist pain to Mr. Moss when he was seeking a letter for
5 light duty work in January 2013. Tr. 225. And, he complained of wrist pain when
6 being evaluated by Dr. Weeks during a consultative examination.⁵ Tr. 213.
7 Plaintiff throughout the medical record sought treatment for other ailments, such as
8 low testosterone, however, he did not seek treatment for his allegedly disabling
9 wrist pain. *See* Tr. 219-31, 248-312. As has been discussed *supra*, there are not
10 medical records before Plaintiff’s application for disability benefits, thus, there is
11 no evidence he sought treatment for his wrist before applying for benefits. Many
12 times, when seeing providers, Plaintiff did not complain of wrist pain. *See, e.g.*,
13 Tr. 258, 261, 262, 264-65, 268, 270, 272. The ALJ reasonably relied on the
14 opinion of Mr. Moss, Plaintiff’s treating provider who took x-rays and examined
15 Plaintiff’s wrist but found no disability over that of Dr. Thompson. *See* Tr. 37-38.
16 Overall, Plaintiff’s medical record does not support Dr. Thompson’s opined
17 limitations, which is a specific and legitimate reason to discount it.

18

19 ⁵Contrary to Plaintiff’s assertion, ECF No. 15 at 16, there is no objective evidence
20 of wrist pain present in this evaluation. *See* Tr. 213-17.

1 3. *Dr. Dalley*

2 Dr. Dalley examined Plaintiff on October 25, 2012, Tr. 233-38, and opined
3 that he would “have severe limitations in his ability to perform activities within a
4 schedule, maintain regular attendance, and be punctual within customary tolerance
5 without special supervision.” Tr. 38 (citing Tr. 235). He further opined severe
6 limitations in completing a normal work day or week without interruptions from
7 psychologically-based symptoms and in maintaining appropriate behavior in a
8 work setting. Tr. 236. Dr. Dalley also indicated that he believed Plaintiff would
9 have a marked restriction in his ability to perform routine tasks without special
10 supervision; communicate and perform effectively in a work setting; and set
11 realistic goals and plan independently. Tr. 236. Finally, he assessed moderate
12 limitations regarding Plaintiff’s ability to understand, remember, and persist in
13 tasks by following detailed instructions; learn new tasks; and adapt to changes in
14 routine work setting. Tr. 235. The ALJ afforded Dr. Dalley’s opinion “little
15 weight.” Tr. 38.

16 Dr. Dalley’s opinion is controverted by Mr. Moss’s opinion, Tr. 254, so to
17 discount it the ALJ must provide specific and legitimate reasons. *Bayliss*, 427 F.3d
18 at 1216.

19 The ALJ rejected Dr. Dalley’s opinion because Plaintiff “had no history of
20 psychiatric treatment or complaints prior to the claimant applying for State welfare

1 benefits through DSHS.” Tr. 38. The Ninth Circuit has said that a claimant’s
2 failure to seek treatment for a mental disorder is not a substantial basis on which to
3 conclude a psychological assessment is inaccurate. *Nguyen*, 100 F.3d at 1465.
4 However, when there is no evidence suggesting a failure to seek treatment is
5 attributable to a mental impairment rather than personal preference, it is reasonable
6 for the ALJ to conclude that the level or frequency of treatment is inconsistent with
7 the level of complaints. *Molina*, 674 F.3d at 1113-1114.

8 As discussed at length *supra*, there is no evidence that Plaintiff’s minimal
9 mental health treatment was attributable to anything other than personal
10 preference. Plaintiff sought regular treatment for other ailments, such as
11 hypogonadism. *See* Tr. 260-306. Regular treatment indicates Plaintiff had access
12 to care, however, Plaintiff did not seek out dedicated mental health treatment. *See*
13 Tr. 260-306. The extent of mental health treatment evident from the medical
14 record is anti-depressants prescribed by a general care provider. *See* Tr. 248-312.
15 Plaintiff rapidly changed between anti-depressant medications because he felt like
16 they were not working. Tr. 272 (“Patient would also like to get on Lexapro. He
17 reports he does not feel any better with paroxetine. Patient has tried multiple
18 medications for his depression including citalopram, paroxetine, wellbutrin, and
19 effexor and failed all of these medications.”). Notably, other than Plaintiff’s
20 complaints that he was depressed, the record does not reflect any adverse effect of

1 his mental health condition. For example, he has never been treated at the
2 emergency room for complications of mental health ailments; never had a
3 documented episode of decompensation; never failed to attend appointments due to
4 mental health symptoms. When viewed in light of the entire medical record,
5 Plaintiff's failure to consistently seek mental health treatment appears to be a
6 consequence of the mild effect of his depression, which the ALJ may permissibly
7 consider when assigning weight to Dr. Thompson's opinion.

8 To the extent that the ALJ's finding here was in error for contravening Ninth
9 Circuit precedent, it is harmless error. The ALJ cited other specific and legitimate
10 reasons which support the ALJ's rejection of the opinion. Therefore, the outcome
11 is the same despite the improper reasoning. Errors that do not affect the ultimate
12 result are harmless. *See Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir. 2007); *Curry*
13 *v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1991); *Booz v. Sec'y of Health & Human*
14 *Servs.*, 734 F.2d 1378, 1380 (9th Cir. 1984).

15 The ALJ also discounted Dr. Dalley's opinion because "Dr. Dalley relied
16 heavily upon the claimant's self-reported symptoms, which are not credible."
17 Tr. 38. A physician's opinion may be rejected if it is based on a claimant's
18 subjective complaints which were properly discounted. *Tonapetyan*, 242 F.3d at
19 1149; *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595 (9th Cir. 1999); *Fair*,
20 885 F.2d at 604. Here, Dr. Dalley relied on two pieces of evidence in making his

1 opined limitations. First, he relies on self-reported complaints that Plaintiff has
2 “[d]ifficulty remembering simple instructions or even what [he] was going to do.
3 Difficulty understanding written instructions[.]” Tr. 234. Second, he relied on a
4 “self-administered adult personality assessment.” Tr. 238. From this assessment,
5 Dr. Dalley diagnosed depression. Tr. 238. However, this test is based entirely on
6 Plaintiff’s self-reported symptoms. Tr. 238 (“This standardized assessment
7 provides a wide range of self-descriptions scored to give a quantitative
8 measurement of an individual’s level of emotional adjustment”). As discussed
9 *supra*, the ALJ properly discounted Plaintiff’s credibility in reporting his own
10 symptoms, calling into question the validity to Dr. Dalley’s depression diagnosis
11 based on a self-administered test. Furthermore, Dr. Dalley’s symptom findings are
12 based on typical symptoms for individuals with personality assessment inventory
13 scores similar to Plaintiff’s. Tr. 238 (“Others with similar scores report being
14 depressed and withdrawn. ... These individuals have difficulty in concentrating
15 and making decisions; their preoccupations and anxiety are likely to impair their
16 ability to think clearly.”). Dr. Dalley did not undertake a finding that those
17 symptoms apply to Plaintiff. *See* Tr. 238.

18 Dr. Dalley also conducted objective tests on Plaintiff, however, the results
19 of those tests are within normal limits. Tr. 238. As discussed *supra*, Mr. Greer
20 scored 28 of 30 possible points on the mental status examination. Tr. 238. Dr.

1 Dalley concluded that Plaintiff's results "exhibit average mental control and
2 demonstrates and average fund of knowledge." Tr. 238. Further, he noted that
3 Plaintiff "demonstrates an ability to think abstractly." *Id.* Dr. Dalley conducted
4 trail-making tests which "examine attentional abilities and are highly sensitive to
5 effects of brain impairment." Tr. 238. As all of Plaintiff's objective testing was
6 within normal limits, Dr. Dally's opined limitations were inconsistent with the tests
7 he performed. In addition, given the test results were within normal limits, Dr.
8 Dalley must have based his opined limitation on Plaintiff's self-reported
9 symptoms, which the ALJ properly discredited. This was a specific and legitimate
10 reason to discount Dr. Dalley's opinion.

11 4. *Dr. Arnold*

12 Dr. Arnold examined Plaintiff on August 21, 2014. Tr. 240-47. Dr. Arnold
13 opined that Plaintiff would have a marked limitation in four areas: the ability to
14 maintain attention and concentration for extended periods; the ability to work in
15 coordination with or proximity to others without being distracted by them; the
16 ability to complete a normal workday and workweek without interruptions from
17 psychologically based symptoms and to perform at a consistent pace without an
18 unreasonable number and length of rest periods; and the ability to accept
19 instructions and respond appropriately to criticism from supervisors. Tr. 245-47.
20 The ALJ assigned "little weight" to the portion of Dr. Arnold's opinion that opined

1 restrictions on Plaintiff's ability to maintain attention and concentration; work in
2 coordination with others; complete a normal workday or week without
3 interruptions from psychological symptoms; and accept instructions and respond
4 appropriately to supervisors. Tr. 38.

5 Dr. Arnold's opinion is contradicted by Mr. Moss's opinion, Tr. 254, so the
6 ALJ must provide specific and legitimate reasons to discount it. *Bayliss*, 427 F.3d
7 at 1216.

8 The ALJ discounted Dr. Arnold's opinion because "this was an examination
9 required by the claimant's attorney just prior to the hearing and it does not address
10 the time period from the alleged on (sic) date of June 1, 2006 through the date of
11 the exam in August 2014, so it is of limited assistance in determining the severity
12 of the claimant's symptoms during the time period at issue." Tr. 38. As Plaintiff
13 points out, "the mere fact that a medical report is provided at the request of counsel
14 or, more broadly, the purpose for which an opinion is provided, is not a legitimate
15 basis for evaluating the reliability of the report." *Reddick v. Chater*, 157 F.3d 715,
16 726 (9th Cir. 1998). However, the Ninth Circuit goes on to hold that, "[e]vidence
17 of the circumstances under which the report was obtained and its consistency with
18 other records, reports, or findings could, however, form a legitimate basis for
19 evaluating the reliability of the report." *Id.* Here, the ALJ did not reject Dr.
20 Arnold's opinion merely because it was requested by Plaintiff's attorney, but

1 because of the other circumstances also surrounding the request. Dr. Arnold's
2 evaluation occurred more than eight years after Plaintiff's alleged disability onset.
3 The report makes no finding as to the period of time covered. *See* Tr. 240-47. The
4 mental status exam only addressed Plaintiff's contemporary mental capabilities.
5 Tr. 240-47. Moreover, it is relevant that Plaintiff's attorney requested this
6 examination because it was not medically indicated, and it followed a finding by
7 Plaintiff's primary care physician and a secondary source that Plaintiff's record did
8 not contain evidence of physical disability. Tr. 254. Under Ninth Circuit
9 precedent, the ALJ's consideration of the circumstances precipitating Dr. Arnold's
10 evaluation are an appropriate reason to discount his opined limitations.

11 The ALJ also discredited Dr. Arnold's opinion because he relied heavily on
12 Plaintiff's self-reported symptoms. Tr. 38. A physician's opinion may be rejected
13 if it is based on a claimant's subjective complaints which were properly discounted.
14 *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d 595; *Fair*, 885 F.2d at 604. The
15 vast majority of Dr. Arnold's report is recitation of Plaintiff's self-reported
16 symptoms and history. Tr. 240-43. Before undertaking diagnosis, Dr. Arnold
17 performed a mental status examination. Most of the evidence from Plaintiff's
18 mental status examination demonstrates non-impairment. Tr. 242. Plaintiff was
19 oriented in all spheres, appropriately attired, exhibited logical and progressive
20 thought patterns, and had normal to marginal memory. Tr. 242-43. The best

1 evidence of impairment is based on Plaintiff's self-reported "depressed" mood.
2 Tr. 242. The single piece of evidence that Plaintiff relies upon as objective indicia
3 of impaired mental status is Dr. Arnold's impression that Plaintiff's affect was
4 "mildly-moderately constricted." Tr. 242. Even if this Court accepts that
5 Plaintiff's affect is objective evidence outside of Plaintiff's subjective symptoms, a
6 single piece of objective evidence does not defeat the ALJ's conclusion that Dr.
7 Arnold based his opinion largely on subjective symptom testimony. Dr. Arnold's
8 reliance on subjective symptom testimony in forming his opinion is a specific and
9 legitimate reason to discount it. *Bayliss*, 427 F.3d at 1216.

10 **CONCLUSION**

11 After review, the Court finds that the ALJ's decision is supported by
12 substantial evidence and free of harmful legal error.

13 **IT IS ORDERED:**

14 1. Plaintiff's motion for summary judgment (ECF No. 15) is **DENIED**.
15 2. Defendant's motion for summary judgment (ECF No. 19) is **GRANTED**.

16 The District Court Executive is directed to file this Order, enter

17 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
18 **THE FILE**.

19 DATED this 16th day of March, 2017.

20 s/Mary K. Dimke

MARY K. DIMKE

UNITED STATES MAGISTRATE JUDGE